

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

CLIFF KELLEHER,)	
)	
Plaintiff,)	Civil Case No. 05-6213-AS
)	
vs.)	ORDER
)	
JO ANNE B. BARNHART,)	
Commissioner of Social Security,)	
)	
Defendant.)	

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KING, Judge:

The Honorable Donald Ashmanskas, United States Magistrate Judge, filed Findings and Recommendation on September 14, 2006. The matter is before this court. See 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b). Plaintiff has filed objections to the Findings and Recommendation and the Commissioner has filed a response.

When either party objects to any portion of the Magistrate's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate's report. See 28 U.S.C. § 636(b)(1)(C); McDonnell Douglas Corp. v. Commodore Business Machines, Inc., 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982).

Having given a *de novo* review of the issue raised in plaintiff's objections to the Findings and Recommendation, I find that the magistrate erred in evaluating the ALJ's discussion of the lay witness testimony of Richard Keim, B.S., D.C. An ALJ must give germane reasons for rejecting lay witness testimony. Nguyen v. Chater, 100 F.3d 1462, 1467 (9th Cir. 1996). While the magistrate properly affirmed the ALJ's rejection of Keim's opinion, the magistrate recited a reason not contained in the ALJ's opinion—that Keim's opinion conflicted with his own treatment notes. Instead, the ALJ's decision reflects that he rejected the chiropractor's opinion because it was not supported by the medical evidence. This is an appropriate basis on which reject lay

witness testimony. See Lewis v. Apfel, 236 F.3d 503, 511 (9th Cir. 2001). The magistrate's reasoning is merely additional support for rejecting Keim's opinion.

Accordingly, I ADOPT Judge Ashmanskas's Findings and Recommendation (#17), with the exception noted above, AFFIRM the Commissioner's decision and DISMISS the case.

Dated this 6th day of November, 2006.

/s/ Garr M. King
Garr M. King
United States District Judge